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**BEFORE THE**
**DEPARTMENT OF TRANSPORTATION** 97 DEC -9 AM 11:59
**WASHINGTON, D. C.**

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| Advance Notice of Proposed Rulemaking: Computer Reservation System Regulations; Notice 97-4 | Docket OST-97-2881 -24 |

**COMMENTS OF TRANS WORLD AIRLINES, INC.**

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## COMMENTS OF TRANS WORLD AIRLINES, INC.

In its Advance Notice of Proposed Rulemaking, the Department has initiated its review of the CRS rules and the need for their extension or revision. In general, TWA agrees that the rules have worked well with respect to the regulatory issues they were intended to address. However, the Rules do not address two major problems -- the exorbitant level of booking fees imposed on carriers who have no alternative but to pay them, and the systematic abuse of the booking process that results in the payment of fees for services that provide no benefits to the carrier. TWA does not believe that the Department should engage in detailed public utility-style rate regulation, but it should limit CRS's to charging only for bookings that resulted in actual benefit to participating carriers. In support of its comments, TWA states as follows:

## I. EXISTING RULES SHOULD BE EXTENDED FOR THREE YEARS.

TWA believes that the existing rules have, on the whole, worked well. In the areas of non-biased product display (§255.4) and the use of third party software and hardware by agencies (§255.9), the rules have been effective in creating a level playing field and a source of reliable information for the travel agent community. The rules on schedule display adequately provide non-discriminatory treatment, and do not need revision. It is unfortunate that the Department last week decided to adopt rules requiring CRS's to offer at least one schedule display giving inferior connecting service equal prominence with online service (Docket 96-1639). TWA is pleased that the Department avoided adopting its vague proposal to require displays "that reflect consumer preference", but believes that the proposal should have been discarded entirely, rather than deferred to this proceeding. In any event, the proposal should go no further. The proposed "consumer preference" rule would embroil the Department in continuous litigation about whether a carrier's desire to elevate its flights in schedule displays is consistent with the consumer's interest. The simple fact is that consumers prefer online service over interline connections, and no rule should be adopted that would require systems to provide displays that are inconsistent with the desires of the consumer. TWA does suggest that existing rules be modified with respect to system owner participation in other systems, discussed in Section III-IV below.

TWA believes, however, that the rules should be extended for a three year term, rather than five years. Based upon past experience, the departmental review at the end of the term usually results in converting the extension period to a term of seven years. This is too long in light of the tremendous changes in business that are being created by the Internet. It is not at all clear that the Department should wait five years to review the impact of the Internet on the CRS industry. TWA, therefore, suggests that the rules be renewed for a term of three years and that DOT's review of the rules be initiated at least one year prior to their expiration.

## II. THE DEPARTMENT SHOULD REQUIRE THAT BOOKING FEES BE CHARGED ONLY FOR TRANSACTIONS THAT PRODUCE REVENUE FOR CRS PARTICIPANTS.

There are two major issues that the renewed CRS rules should address -- the extraordinarily high level of booking fees and the collection of fees for travel agent transactions that provide no benefit to participating carriers. Over the past several years, the vendors have exercised their market power to raise booking fee levels and change the structure of booking fee payments to the severe disadvantage of participating carriers. TWA does not propose that the Department engage in direct regulation of booking fee levels, although such regulation would be fully justified by the lack of marketplace restraints on the power of vendors to raise prices. Rather, the Department should regulate booking fee structure, and require that booking fees be charged only for reservations that actually result in the issuance of tickets (either paper or electronic).

The Department has already firmly established that the CRS vendors have market power over participating carriers. As the Department stated in adopting the final CRS rules in 1992,

> For the reasons described earlier and in the NPRM, we find that each vendor has market power over other carriers. The best evidence of this is, as indicated, a vendor's ability to set prices for its CRS services without regard to costs, because vendors need not and do not compete for participating carriers. " 57 FR 43780, 43789 (September 22, 1992).

The vendors have amply justified the Department's finding by their subsequent actions. Since the adoption of the 1992 rules, they have substantially increased booking fees and arbitrarily changed the structure of pricing to airlines. Between 1994 and 1996, TWA's domestic booking fee costs have increased by 38%, compared to a 17% increase in traffic. These cost problems have been compounded by the change in the booking fee structure. While vendors had previously charged for segments booked, net of cancellations, they have now adopted various formulas under which carriers are charged for every transaction in creating the PNR. Thus, carriers are charged when the travel agent makes the reservation, cancels bookings, creates passive segments, prints customer itineraries, and constructs travel agent training and test PNR's. Because of travel agent booking and rebooking, this can result in extraordinary booking fees for single reservations. TWA has found examples of PNR's that cost it as much as $357 for fares, with three people in the PNR, that produced total revenue of $612. In another example, TWA was billed $165 in booking fees for space that was ultimately canceled.

In many cases, excessive booking fees are driven by productivity pricing clauses in CRS contracts with travel agents. Under these provisions, fees paid by agencies vary inversely with the number of bookings or transactions per terminal. In some cases, productivity pricing results in payments to the agency. This system encourages abuse because it provides incentives to travel agents to make false bookings, duplicate reservations, and excessive passive segments. The amount of incentives paid to travel agencies is enormous. One large agency, the American Automobile Association, has announced that it expects to receive $75 million in segment productivity fees during its five-year agreement with Apollo (Travel Weekly, September 25, 1997, p. 46).

TWA does not believe that DOT should engage in direct price regulation of the CRS business; such public utility-type ratemaking is a relic of the pre-deregulation area and inappropriate for a high technology industry. However, DOT should adopt a regulation governing booking fee structure, which should limit booking fees to transactions that actually produce revenue for carriers. Thus, booking fees should be charged only on a segment basis and only for segments for which tickets have been issued. TWA fully recognizes that the individual fee per segment would probably increase under the new structure. However, the revised pricing structure will send correct economic signals to all participants in the industry, eliminate fraud, and ultimately increase the efficiency of computerized reservation systems. A system of booking fees for segments actually booked and ticketed will have the following results:

1. The inequity of the current CRS pricing structure will be reduced. Airlines will pay for what they receive; not for the extraneous activities of the travel agent. The problem of passive segments would be eliminated. Travel agents can still create as many as they desire, but they will longer be an issue for airlines, who will not have to pay for them. Other travel agent abuses will also be reduced. By shifting the cost of such abuses from the airline to the CRS vendor, the Department will transfer the burden of disciplining travel agents from participating carriers, who do not have the ability to monitor bookings through four CRS's from over 30,000 agencies, to the CRS's who have direct contact with the agency and who can enforce sanctions against abuse. TWA is well aware that the vendors argue that airlines can discipline agencies that abuse the system. In reality, however, this is impossible. TWA's proposed rule will place the burden of enforcement where it belongs. The Department has specifically requested comment upon why the airlines themselves cannot take action against agents who make duplicative bookings. We discuss this in detail in Section V below.

2. The problems associated with productivity pricing will be reduced and perhaps eliminated. Agencies will no longer be able to impose costs on airlines by productivity pricing strategies. Because duplicative bookings and passive segments will no longer produce revenue for the CRS, productivity pricing can be expected to change to be based on tickets issued rather than segments booked. Agencies will not be able to abuse such productivity pricing clauses, because they will have to remit revenue to the Area Settlement Plan for every ticket issued.

3. Vendors will continue to have market power over airlines while competing extensively for agency placements. However, it is possible that the revenue equation will shift, and vendors will recover some of their costs from agencies, rather than relying solely on their monopoly power over airlines to fund their systems. Because agent abuse would impose cost on the CRS rather than the participating carrier, vendors could be expected to develop pricing structures for agents which would penalize such abuse and reward efficiency in use of the system. This shift in the cost burden may also occur because shifting to a fee for segments actually ticketed would likely increase fees for segments booked (airlines will still be better off because of the cost avoidance on non-productive segments). This will create greater cost savings if airlines can develop alternative means of distribution. One of the problems with the current system is that, even if carriers develop direct links between travel agents and their internal systems, they will still pay booking fees to the extent that agents create

passive segments or duplicative bookings in the CRS for purposes such as back office accounting. By eliminating these fees and increasing the savings achieved by each segments transferred from a CRS to a bypass booking, the rule will encourage the development of alternative systems. Thus, TWA's proposed rule may actually reduce the monopoly power of vendors over airlines, and shift some of the cost burden to travel agencies.

The argument of vendors against a pricing structure based on segment fees is that they may not reflect the variance in the amount of computer resources use in different booking transactions. However, by allowing fees for every element of the booking transaction, the current pricing structure encourages wasteful use of CRS resources because it fails to penalize abusive booking practices or provide incentives for making efficient use of the systems. A segment fee is, in effect, based on the average cost of all bookings. Such a fee will lead vendors to train agents to use the systems efficiently, and thus to reduce the vendors' cost. A segment fee structure will encourage more efficient use of CRS resources.

## III. THE REQUIREMENT TO PARTICIPATE IN OTHER SYSTEMS SHOULD APPLY TO COMPANIES THAT MARKET CRS'S AS WELL AS TO SYSTEM OWNERS.

Recent changes in the structure of the international CRS industry require that Section 255.7(a) should be extended to airlines that have marketing agreements with CRS's. As the

Department knows, two major foreign CRS's have been created in the last half dozen years. Each is owned by a consortium of international carriers, and each has marketed its services around the world by appointing the national flag carrier as its marketing company in that carrier's home country. For example, Lufthansa markets Amadeus in Germany; Swissair markets the system in Switzerland, and Iberia is the national marketing company for Spain. Because both CRS's compete on a worldwide basis, they have also appointed national carriers as marketing companies in many countries where the carrier does not have an ownership interest in the CRS. While TWA is not privy to the details of such marketing agreements, it seems clear that the national carriers receive financial incentives to market the systems. These financial incentives may include commissions on sales and savings on booking fees. They are just as powerful as an equity interest in providing reasons for the national carriers to discriminate against U.S. CRS systems.

The Department is well aware that there have been several incidents in which foreign carriers that marketed other CRS's have withdrawn from U.S. CRS's in order to deprive them of essential information for sale of U.S. systems in the foreign carrier's home market. TWA, for example, was recently involved in a dispute with a Middle Eastern carrier, which is a national marketing company for Galileo, and which had given notice that it intends to withdraw from WORLDSPAN. This would have forced travel agents in that country to convert from WORLDSPAN to Galileo. TWA brought this situation to the attention of the U.S. government, which was able to resolve the problem in the course of bilateral negotiations. This avoided the necessity for filing an IATFCPA complaint. However, it is likely that similar situations will reoccur in other countries.

By making it clear that participation in marketing arrangements carries with it a duty to participate in other systems, amendment of Part 255.7(a) will protect the position of U.S. CRS vendors. The Department should also amend the definition of "System Owner" in §255.3 to include all ownership interests in CRS's. The conversion of CRS's to public ownership has reduced the percentage of airline ownership. For example, the ownership interests of the eleven owners of Galileo was reduced from 100% to 66.6% after its recent initial public offering. The provisions of §255.11(b) should also be expanded. At present, they simply allow a vendor to discriminate against foreign carriers that discriminate against U.S. carriers in their systems. But, this is inadequate because, when the problem arises, the foreign carrier would have already withdrawn or downgraded its participation. The section should be revised to provide for some automatic sanction on the foreign carrier's airline operation to the United States.

Of course, the revised provision should apply in both domestic and international CRS markets. The same financial incentives may arise from a domestic marketing agreement as from one in a foreign country. For example, Southwest has not merely chosen to limit its CRS participation to SABRE; it reached an agreement with American under which Southwest both participated in the CRS and became a marketing agent for SABRE. On January 17, 1995, Southwest and SABRE simultaneously announced two related agreements. SABRE announced that it was creating a new booking level -- Basic Booking Request -- at a booking fee of $1.60 per segment, and that Southwest had agreed to be the first carrier participating in that category. SABRE also announced that Southwest had "officially endorsed" SABRE, and would assist in marketing and selling the system. SABRE would pay Southwest for its marketing efforts. A Southwest representative said that the carrier believed the promotional income it would receive from SABRE would exceed the cost of the higher booking fees paid to SABRE[1].

Under these circumstances, Southwest should be required to participate in other systems to the same extent it participates in SABRE. Southwest's exclusive participation in SABRE undoubtedly gives SABRE an unfair competitive advantage -- one that may be as much related to the financial incentives paid to Southwest under the marketing agreement as to Southwest's desire to save costs through non-participation in other systems. If Southwest, purely as a consumer of CRS services, desires to participate only in SABRE, that should be its right. However, where its decision is tainted by the marketing incentives that it receives, its decision should not be allowed to distort CRS competition.

## IV. CARRIERS THAT OWN OR MARKET CRS'S SHOULD BE REQUIRED TO OFFER FULL AVAILABILITY TO OTHER SYSTEMS, BUT NOT TO PAY FOR UNNECESSARY ENHANCEMENTS.

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[1] Maxon, Southwest Expands SABRE Use. Reservations Service May Please Travel Agents, Dallas Morning News, January 18, 1995, p. 1D.

Section 255.7(a) requires that any system owner participate in other systems, and any enhancement to the same extent that it participates in such enhancements in its own system. TWA believes that, at the same time as the Department extends the reach of this section to airlines that have marketing agreements with CRS's, it can make the rule more acceptable to foreign countries by slightly reducing the burden of participation. The Department should require continued participation at the level of full availability for any carrier covered by the rule that provides such availability to any CRS. However, it should not require participation in enhancements if a carrier does not believe that the value of the enhancement justifies its added cost.

TWA raises this issue because it was recently faced with a demand from a CRS vendor that it increase its level of participation to the highest level simply because it was hosted in WORLDSPAN, and therefore had the equivalent of last seat availability in that system. TWA found, however, that the vendor had failed to participate at the highest level in WORLDSPAN, despite its obligation under the regulation, and resolved the issue by promising to participate when the other carrier raised its availability level in WORLDSPAN. The other carrier did so, and TWA has raised its participation in the other system to the highest level. TWA does not believe, however, that the increased level of connectivity is worth the added expense when it already provides travel agents direct access to its internal system through the same CRS.

The issue of last seat availability was important 10 years ago when it was first raised in the context of CRS regulation because some vendor carriers were claiming that agents had to convert to their systems as the only way of obtaining such availability. While the participation requirement is now incorporated into the regulation, the reason for it no longer has substantive validity. Last seat availability is no longer a marketing tool that can be used to force agency conversions, which are now based on more fundamental calculations of generation or avoidance of booking fees. The regulation should be revised to recognize these changes in the nature of competition, and airlines should not be forced to pay for CRS services that they do not need when failure to participate in an enhancement will have no competitive impact in the CRS business.

## V. VENDORS, RATHER THAN CARRIERS SHOULD HAVE THE BURDEN OF DISCIPLINING AGENTS FOR ABUSIVE BOOKINGS

As noted above (p. 6), DOT has asked parties commenting on the issue of productivity pricing to explain why airlines cannot stop illegitimate or unnecessary travel agency transactions by taking action against travel agencies that engage in abusive bookings. There are several practical reasons why vendors, rather than airlines, should be required to police such abuses.

1. Most airlines simply lack the resources to police 30,000 agencies. In contrast, the vendors deals with agencies on a daily basis with respect to CRS matters. A single airline may

not catch an abuse by a particular agency, and may not have enough of an economic interest in a particular agency location to expend resources in curbing the abuse. In contrast, the vendor is more likely to discern a pattern of abuse if it received complaints from airlines about a particular agency.

2. The only effective sanction against agencies is to turn off their computer systems. Participating carriers can only discipline an agent by terminating its appointment and removing its validation plate validation plate. However, this does not eliminate the ability of the agency to make bookings on the carrier and to ticket on the plate of other airlines. Three of the four CRS's have no ability at all to limit an agency whose ticketing authority has been removed from continuing to make bookings on a particular airline. SABRE has developed point of sale controls which allow bookings to be blocked by Participating Carriers. However, this is not very effective. In the one case in which TWA has used point of sale controls, the terminated agent brought suit and gained a temporary restraining order against TWA. The stay was later lifted, but TWA has been engaged in litigation for several months. During that period, the agent has attempted to find ways around the block by having other agencies make its booking for it. Thus, not even point of sale controls can guarantee that an airline can terminate the booking abuses of a particular agency.

The only step the Participating Carrier can take is to request the vendors to terminate the contract of an agency that abuses the system. This, of course, is against the vendor's selfinterest, because it would then lose booking fee revenue. They much prefer to place the burden upon the carriers. However, only the vendors can effectively control abusive booking. The pricing structure proposed above by TWA will give it the incentive to do so.

## VI. INTERNET SERVICES

TWA is not prepared at this stage of the proceeding to make specific recommendations on the extent to which CRS regulation should be extended to Internet bookings. It has several concerns, and will carefully review the Comments of other parties before commenting in more detail in its Reply Comments.

TWA's primary concern is to protect its inventory against abusive or speculative bookings by members of the public. Individual consumers are not as knowledgeable as travel agents, or under the same discipline, and have a greater tendency to make duplicative bookings or bookings that they have no intent to use. Internet bookings can cause empty cabins and deprive legitimate passengers of flights they desire. The industry has been working through the Airlines Reporting Corp. to developed voluntary standards for Internet bookings, but TWA is concerned about their enforceability. One goal of this proceeding may be to incorporate those standards into regulations which could be enforced by the Department.

Another possibility may be to allow airlines to restrict CRS's from allowing Internet bookings on them. One concern has been that CRS's have used existing participating carrier agreements, intended to authorize CRS's to offer availability to travel agents, to extend such availability and booking capability to the general public through the Internet. They have exercised their market power as a CRS to require participating carriers to make their inventory available for all purposes that the CRS desires. In effect, they had tied access to travel agents to a requirement that inventory be offered to the general public through the Internet. The Department may want to consider a rule that would, in effect, require two contracts between the vendors and the carrier. One would cover the CRS offered to travel agency, and the other the Internet. Because vendors do not yet have market power with respect to the Internet, carriers may choose to decline Internet participation. This would give vendors incentives to insure that only legitimate Internet bookings are processed. Clearly, a major element of this proceeding will be consideration of what rules are appropriate for the Internet. TWA looks forward to contributing to the discussion of this issue.

Respectfully submitted,

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December 9, 1997

## CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing document upon all persons named on the attached service list by causing copies therof, postage prepaid, to be mailed to each of them.

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December 9, 1997

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